

STATE OF MICHIGAN
COURT OF APPEALS

In the Matter of B. ARMOUR, Minor.

UNPUBLISHED

July 15, 2014

No. 319749

Kent Circuit Court

Family Division

LC No. 13-052512-NA

Before: FITZGERALD, P.J., and SAWYER and SHAPIRO, JJ.

PER CURIAM.

In this child protection proceeding, respondent mother appeals as of right the trial court's order exercising jurisdiction over the minor child under MCL 712A.2(b)(1) and (2). We affirm.

To exercise jurisdiction over the child, the trial court was required to find that a statutory basis for jurisdiction exists under MCL 712A.2(b) by a preponderance of the evidence. *In re BZ*, 264 Mich App 286, 295; 690 NW2d 505 (2004). "We review the trial court's decision to exercise jurisdiction for clear error in light of the court's findings of fact[.]" *Id.* at 295 (citation omitted). A finding is clearly erroneous when a reviewing court is left with a definite and firm conviction that a mistake was made. *In re JK*, 468 Mich 202, 209–210; 661 NW2d 216 (2003). Additionally, deference is given to the trial court's special opportunity to judge the weight of the evidence and the credibility of the witnesses who appear before it. See *In re Miller*, 433 Mich 331, 337; 445 NW2d 161 (1989).

The trial court exercised jurisdiction over the child under MCL 712A.2(b)(1) and (2). Subsection (b)(1) provides, in relevant part, that a court has jurisdiction in proceedings concerning a juvenile under 18 years of age "[w]hose parent or other person legally responsible for the care and maintenance of the juvenile, when able to do so, neglects or refuses to provide proper or necessary support, education, medical, surgical, or other care necessary for his or her health or morals" Subsection (b)(2) provides, in relevant part, that a court has jurisdiction in proceedings concerning a juvenile under 18 years of age "[w]hose home or environment, by reason of neglect, cruelty, drunkenness, criminality, or depravity on the part of a parent, guardian, nonparent adult, or other custodian, is an unfit place for the juvenile to live in." In this case, the trial court found grounds for jurisdiction under MCL 712A.2(b) based on three

factual findings.¹ We detect no error from the trial court's exercise of jurisdiction over the child because there is abundant support in the record for the court's findings.

First, the trial court found that on July 26, 2013, as the minor child attempted to leave respondent's home, respondent struck the minor child in the mouth and choked the minor child, resulting in the minor child gasping for air, a cut lip, and rug burns to the minor child's elbows. That finding was supported by the minor child's testimony regarding the July 26, 2013, incident. That finding was also supported by police officer Ryan Smith, who testified that after the incident he saw the minor child lying on the ground gasping for air and that the minor child had a small cut on her lower lip and fresh rug burns on both of her elbows. Another witness also observed that the minor child had rug burns on both of her elbows and red bruising from her collarbone all the way to the front of her chest.

Second, the trial court found that there was an incident on August 1, 2013, where respondent struck the minor child's arm. That finding was supported by the minor child's testimony, as well as the testimony of a witness who observed a red mark on the minor child's arm that looked like a bruise.

Finally, the trial court found that respondent created an environment of cruelty and alienation for the minor child. That finding was supported by the minor child's testimony that, in the past, respondent had hit her with belts, her fists, and a remote. The minor child testified that a typical day living with respondent included arguments and comments from respondent such as "how much better she'll be without" the minor child, "bitch," "heffa," "f--- you," "I don't love you," and "I hate you." The minor child said that she did not have privacy in respondent's home. The minor child testified that there was an earlier incident where respondent wrestled her to the ground to confiscate her cellular telephone. The minor child testified that respondent monitored her internet usage so that she could not use Facebook or contact other people.

Additionally, on June 9, 2013, respondent took away the minor child's cellular telephone after the minor child told a friend that she could not "hang out" with her. The minor child testified that respondent prevented her from having contact with the neighbors across the street from respondent's house. Respondent also kept the minor child from seeing her friends. The minor child testified that, even at the time of the trial, that she was terrified of respondent, that respondent had not been a "mother figure" to her, and that respondent had not provided her with emotional support. Further, a child protective services (CPS) investigator testified that the time she spent with respondent on the night of August 1, 2013, while investigating this case was "chaotic, bad, and unpredictable" and that no child should reside in respondent's home.

In sum, each of the trial court's factual findings had support in the record, and we defer to "the trial court's special opportunity to judge the credibility of the witnesses." *In re HRC*, 286

¹ The trial court did not distinguish between subsections (b)(1) and (2) in its findings.

Mich App 444, 459; 781 NW2d 105 (2009).² The trial court did not clearly err in its factual findings. MCR 3.902(A); MCR 2.613(C).

The trial court's findings regarding respondent's actions on July 26, 2013, and August 1, 2013, combined with the trial court's finding that respondent created an environment of cruelty and alienation for the minor child, supported grounds for jurisdiction under MCL 712A.2(b) because those findings showed by a preponderance of the evidence that respondent failed to provide necessary care for health or morals, that there was a substantial risk of harm to the minor child's mental well-being, and that respondent's home was an unfit home environment by reason of respondent's neglect or cruelty.

Affirmed.

/s/ E. Thomas Fitzgerald

/s/ David H. Sawyer

/s/ Douglas B. Shapiro

² The remainder of respondent's argument lacks merit.